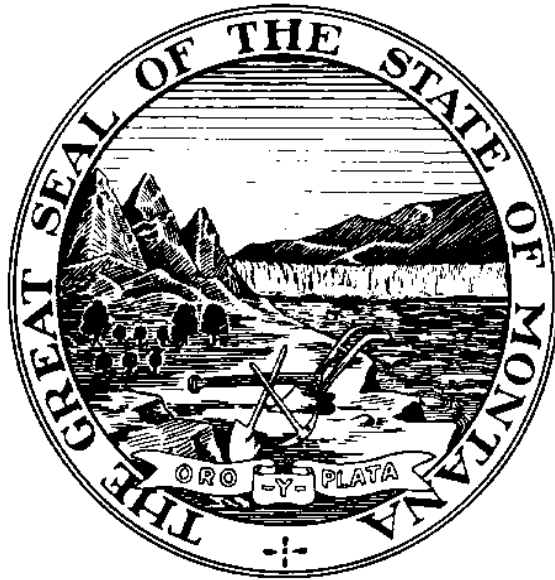


# ETHICS

## STANDARDS OF CONDUCT FOR STATE EMPLOYEES



Revised  
September 2001

prepared by the department of administration  
state personnel division

## ***STANDARDS OF CONDUCT FOR STATE EMPLOYEES***

**2-2-103, Montana Code Annotated. Public trust -- public duty.** (1) The holding of public office or employment is a public trust, created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public employees. A public officer, legislator, or public employee shall carry out the individual's duties for the benefit of the people of the state.

(2) A public officer, legislator, or public employee whose conduct departs from the person's public duty is liable to the people of the state and is subject to the penalties provided in this part for abuse of the public's trust.

(3) This part sets forth various rules of conduct, the transgression of any of which is a violation of public duty, and various ethical principles, the transgression of any of which must be avoided.

### ***Why do we have standards of conduct and a code of ethics?***

The Montana Constitution requires a Code of Ethics prohibiting conflict between public duty and private interest. Your position as a state employee is a public trust and state law requires that you perform your job for the benefit of the people of the state.

Standards of Conduct and the Code of Ethics are found in Title 2 – Chapter 2 MCA. The legislature makes changes to this statute from time to time. The most recent changes were effective on October 1, 2001.

This pamphlet provides an overview which is intended to help you, as a state employee, understand the impact this statute has. Each agency will adopt and implement internal rules and procedures. It is your responsibility to make sure you understand the standards of conduct and ethical principles which apply to you as you do your job. You should contact your supervisor or agency personnel director for additional information.

Other provisions of the Standards of Conduct, 2-2-101, et seq. MCA, which affect elected officials and local government employees, are not addressed here. The Commissioner of Political Practices will issue information and rules concerning **enforcement of the act**.

### ***What can I rely on to guide my conduct?***

As you will see, some actions are clearly conflicts between public duty and private interest, while other actions may only pose conflicts in certain circumstances.

If you rely only on the Standards of Conduct law as your guide, you will not have a complete picture of the standards of conduct to which you may be held. Other state laws, rules and department policies direct employee conduct. Some professions and occupations have ethical standards to which those practicing the profession must adhere. As part of the implementation of the Standards of Conduct, each department will adopt a standards of conduct policy which may provide more specific requirements and limits on activities based on the agency's mission or on the duties of the position.

The Standards of Conduct law establishes outside limits on certain actions and penalties for

violations. This pamphlet will summarize those limits.

This does not mean that any action inside the limits will be acceptable or legal. Criminal standards of conduct are addressed in a different part of state law (see Title 44, part 7, MCA). Major areas covered in Title 44 include threats and improper influence, bribery, compensation for past official action, gifts to public servants, and official misconduct.

### ***What areas does the Standards of Conduct law cover?***

Standards of conduct for public employees may be grouped into four major categories. The law is summarized for each category.

#### **1. GIFTS**

*As a state employee you may not:*

- Accept a substantial gift or economic benefit, generally more than a value of \$50, that:
  - A. would tend to influence you to depart from the faithful and impartial discharge of public duties, or
  - B. a reasonable person would know is a reward for official action taken.

Examples of “economic benefit” include a loan at a rate substantially lower than the current commercial rate, or compensation for private services which substantially exceeds the fair market value of the services.

*What kinds of gifts may be acceptable?*

Your department policy may provide additional guidance on acceptance of gifts or economic benefits. Acceptance of a gift or economic benefit of any value which is intended to exert improper influence on you or which you believe is a reward for action taken should be closely scrutinized. A gift or economic benefit which is intended as a bribe, regardless of value, could result in criminal penalties.

The following are excluded from the definition of a gift in 2-2-102, MCA:

- Any gift that is not used and is either returned to the donor within 30 days or donated to a charitable organization.
- Food and beverage that you consume while participating in a charitable, civic or community event which is related to your employment or that you are attending in an official capacity.
- Educational materials directly related to your duties.
- An award presented publicly in recognition of public service.

- Educational activity that does not place or appear to place you under any obligation and is not lavish or extravagant.

## **2. SELF-DEALING**

*As a state employee you may not:*

- Disclose or use confidential information acquired in the course of your job for personal financial gain.
- Acquire an interest in any business or undertaking you have reason to believe may be directly and substantially affected to its economic benefit by actions taken by your employing agency.
- Perform an official act which directly and substantially harms a business when you have a substantial personal interest in a competing business.
- Engage in a substantial financial transaction for your private business purposes with a person whom you inspect or supervise in the course of your official duties.
- Assist a person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from your agency.
- Perform an official act which directly and substantially provides an economic benefit to a business in which you have a substantial financial interest or for which you are engaged as a counsel, consultant, representative or agent.

## **3. UNWARRANTED PRIVILEGES**

*As a state employee you may not:*

- Engage in any activity, including lobbying, on behalf of an organization of which you are a member while performing your job duties.
- Participate in a proceeding before your agency, that is within the scope of your job duties, when an organization of which you are an officer or director is involved, or attempt to influence a local, state, or federal proceeding in which you represent the state.
- Within 12 months following voluntary termination, obtain employment taking advantage unavailable to others of matters with which you were directly involved. Such matters include rules which you helped formulate and applications, claims or contested cases in which you were actively involved.
- Within 6 months of termination, contract or be employed by someone who contracts

with the state involving matters with which you were directly involved during your employment with the state. This does not apply to contracts awarded to the low bidder based on a competitive process or to merchandise sold to the highest bidder at public auction. This does not apply to you if you were terminated due to a reduction in force.

#### **4. PUBLIC PROPERTY FOR PRIVATE BUSINESS PURPOSES**

*As a state employee you may not:*

- Receive two salaries as a public employee for work during overlapping hours, except if the duplicate pay for one job consists totally of accrued leave and/or compensatory time during the overlapping period.
- Use public time, facilities, equipment, supplies, personnel, or funds for private business purposes. This includes soliciting support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless authorized by law or properly incidental to another activity required or authorized by law. Further specific guidance on what is allowable for state employees can be found in 2-2-121(3), MCA. You may participate in charitable fund raising activities, if approved by your supervisor or authorized by law.

#### ***What else does the law require?***

The law requires you to disclose certain information under specific circumstances. Your department policy provides procedures for making required disclosures.

#### **Disclosure requirements**

- You may not solicit or accept employment or engage in negotiations or meetings to consider employment with a person whom you regulate in your official duties, without first giving written notice to your supervisor or department director.
- If you are a member of a quasi-judicial board or commission or a board, commission or committee with rulemaking authority and have a conflict created by a personal or private interest that gives rise to the appearance of impropriety, you must disclose the interest creating the conflict prior to participating in official actions.
- Prior to acting in a manner that may affect your public duty, including the award of a permit, contract or license, you must disclose the nature of the private interest that creates the conflict. This disclosure must be in writing to the Secretary of State and must list the amount of private interest, the purpose and duration of your services, any compensation you have received and other relevant information. If you perform the act involved, you must include in the record the nature of the interest you disclosed.
- Prior to December 15 of even-numbered years, department directors and individuals appointed to office must file a business disclosure statement with the Commissioner of

## Political Practices.

### ***Are there other laws or rules which affect your conduct?***

A wide range of state and federal laws and rules concerning employee conduct have been enacted. Some activities for which there are laws or rules include use of telephones, use of motor pool vehicles, drug and alcohol use as it affects work, use of leave, making financial claims against the state, and prohibiting discrimination in employment and the delivery of services. You already may be aware of additional examples of laws and rules for your agency or position. Contact your supervisor or agency personnel director for further information.

Violations of these rules and laws may subject you to disciplinary action by your agency and also may be violations of the Standards of Conduct. And, as noted earlier, some violations may lead to criminal prosecution.

### ***How are the Standards of Conduct enforced?***

Each department director is charged with adopting a standards of conduct policy for employees and may take disciplinary action to enforce that policy.

The Commissioner of Political Practices is responsible for investigating and enforcing the Standards of Conduct when complaints are received by that office. When a legislative act is involved in the complaint, the commissioner does not have jurisdiction over a complaint about a legislator. The following actions and penalties are possible:

- Any person alleging a violation may file a complaint with the Commissioner of Political Practices. If the complaint is accepted by the Commissioner for investigation, the Commissioner will hold an informal contested case hearing and issue a decision.
- Proof of commission of unlawful acts outlined in the Standards of Conduct and Code of Ethics is proof the employee has breached his or her public duty.
- If the Commissioner determines a violation has occurred, an administrative penalty of not less than \$50 nor more than \$1,000 may be imposed along with the costs of the proceeding. If the violation is by a state employee, the Commissioner may also recommend disciplinary action by the employing agency.
- If the Commissioner determines that a violation did not occur, costs for the proceedings may be assessed against the person bringing the complaint.
- Judicial Review of commissioner decisions is through the state District Court.

## **CLOSING**

Two main principles apply to your conduct in your job: public trust and public duty. By keeping these in mind as you do your job on a day-to-day basis, you will be able to carry out your duties for the benefit of the people of the state and avoid taking actions which would cause you to depart from your public duty and violate the public's trust.

*For additional information, contact your supervisor or agency personnel director.*

### **Table of Citations for the Standards of Conduct, 2-2-101, et seq., MCA**

Citations from the Standards of Conduct, 2-2-101 et. seq., MCA, are listed here.

#### Part 1. Code of Ethics

2-2-101	Statement of purpose
2-2-102	Definitions
2-2-103	Public trust -- public duty
2-2-104	Rules of conduct for public officers, legislators, and public employees
2-2-105	Ethical requirements for public officers and employees
2-2-106	Disclosure
2-2-111	Rules of conduct for legislators
2-2-112	Ethical requirements for legislators
2-2-121	Rules of conduct for public officers and public employees
2-2-131	Disclosure
2-2-135	Ethics committees
2-2-136	Enforcement for state officers, legislators and state employees --referral of complaint involving county attorney
2-2-144	Enforcement for local government

#### Part 2 -- Proscribed Acts Related to Contracts and Claims

2-2-201	Public officers, employees, and former employees not to have interest in contract -- local government waiver
2-2-202	Public officers not to have interest in sales or purchases
2-2-203	Voidable contracts
2-2-204	Dealings in warrants and other claims prohibited
2-2-205	Affidavit to be required by auditing officers
2-2-206	Officers not to pay illegal warrant
2-2-207	Settlements to be withheld on affidavit

#### Part 3 -- Nepotism

2-2-301	Nepotism defined
2-2-302	Appointment of relative to office of trust or emolument unlawful -- exceptions -- publication of notice

- 2-2-303        Agreements to appoint relative to office unlawful
- 2-2-304        Penalty for violation of nepotism law

Alternative accessible formats of this pamphlet will be provided on request. Persons who need an alternative format should contact the State Personnel Division, Department of Administration, 125 N Roberts St., Box 200127, Helena, Montana 59620-0127; telephone (406) 444-3871. For those with a TDD, relay service is available by dialing 1-800-253-4091.